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Annual Report of Findings and Recommendations
of Nursing Homes

January 1, 1975--December 31, 1975

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Massachusetts Department of Elder Affairs
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TABLE OF CONTENTS

I. INTRODUCTION

II. PROJECT SCOPE

III. PROJECT ACTIVITIES

Implementation of Life Safety Code

Interagency Agreement

Board Membership

Furlough Program

Legal Problems

Personal Laundry Charge Deduction

Legislation

IV. LEGISLATIVE RECOMMENDATIONS

V. GENERAL RECOMMENDATIONS

Medical Discrimination

Medical Directors

Training of Nurses Aides

Rehabilitation -- Physical Therapy

Investigative/Hearing Policy

Title XVIII - XIX Provider Contracts

I. INTRODUCTION

Chapter 19A of the General Laws of Massachusetts, Section 4, paragraph (o) authorizes the Secretary "to conduct yearly studies and evaluations pertaining to the quality of care and social services for nursing home patients and report such findings and recommendations to the General Court." No funds were appropriated from the General Court to fund such activities. However, this Department did receive Federal funding for a Nursing Home Ombudsman Project and this report reflects the findings and recommendations relating thereto. The first annual report covers the period from January 1, 1975 through December 31, 1975.

II. PROJECT SCOPE

The primary purpose of the State Nursing Home Ombudsman Project is to provide advocacy for the elderly residing in nursing homes through the reception, processing and resolution of complaints. It readily became apparent that many elders could also benefit from the solution of problems involving the institutionalized person, the spouse remaining in the community, and the general elderly population, and through the acceptance and response to information and referral requests. Furthermore, the latter frequently serves as the individual's initial contact with the program and the assistance it offers.

The Nursing Home Clearinghouse Project was created on July 1, 1975 to provide information to prospective nursing home patients on the selection of a satisfactory nursing home. The unit advises individuals as to the availability of a nursing home bed in the desired geographical location. However, it does not actually rate nursing homes or make the actual selection. The next of kin or the representative of the prospective patient are advised to visit the nursing home, make an inspection and select the facility which meets with their approval.

During the reporting period, a combined total of 804 complaint, problem, and information and referral contacts have been received by the Ombudsman and clearinghouse staff. The categorical totals are as follows:

Complaints	225
Problems	107
Information and Referral	378
Nursing Home Clearinghouse	94
Total Contacts	<u>804</u>

2

Nursing home residents and spouses in the community were the primary source of complaints and problems received. However the majority of information and referral inquiries were made by elders in the community.

Furthermore, a review was made of 30 cases of nursing home violations which had been appealed to the Superior Court. The disposition of 15 of the cases was arranged. Subsequent dispositions of those cases remaining on the open dockets are now in the hands of the Office of the Attorney General and the Legal Division of the Department of Public Health.

III. PROJECT ACTIVITIES

The processing of nursing home complaints and problems underscored the desirability of initiating innovative action in related fields. Therefore, the Ombudsman project directed attention to broad areas of activity on both an individual and interagency basis.

IMPLEMENTATION OF THE LIFE SAFETY CODE

Compliance with the Life Safety Code is a federal regulation applicable wherever there is federal financial participation in the payment of nursing home patients' costs. An effective date of October 28, 1971 was established.

The Ombudsman worked with the Departments having jurisdiction - Department of Public Health, Department of Public Welfare, and the Department of Public Safety - as well as with the Federal Division of Long Term Care Standards Enforcement. The Ombudsman participated as a member of a state agency committee which was charged with the responsibility of finding relocation facilities for patients who were housed in nursing homes which were decertified for noncompliance with the Life Safety Code.

A memorandum to the Department of Public Welfare (DPW) was prepared in November of 1973 urging the selection of a relocation coordinator and a relocation team. These individuals would be trained so as to provide expertise and direction in the discharge of the DPW's mandated responsibility for the relocation of nursing home residents. Although these recommendations were not fully adopted, principally due to lack of funding, the memorandum acted as a catalyst in the resultant relocation effort.

INTERAGENCY AGREEMENT

The Ombudsman worked with the General Legal Counsel of the Department of Public Health to develop an interagency agreement to implement the authority and responsibility of the Department of Elder Affairs in the public health field, under the provisions of Chapter 1168 of the Acts of 1973. This agreement was executed by the Commissioner of the Department of Public Health and the Secretary of the Department of Elder Affairs, with a retroactive

effective date of July 1, 1974. On March 21, 1975 the inter-agency agreement was supplemented by provisions which provide for additional access to Department of Public Health files within the limitations of the Freedom of Information Act.

BOARD MEMBERSHIP

The Department of Elder Affairs has been represented at the Public Health Council and the Board of Registration of Nursing Home Administrators by the Office of the Ombudsman.

The Ombudsman represents the Secretary of Elder Affairs as an ex officio member of the Governor's Advisory Council for review and implementation of the Comprehensive Health Planning Agency's activities and the National Health Planning and Resources Development Act (Public Law 93-641).

FURLough PROGRAM

The Department aided in the development and adoption of the nursing home patients' furlough program for both medically and non-medically related patients.

LEGAL PROBLEMS

Many legal problems are encountered by nursing home patients and the elderly left in the community. The principal areas in which these problems arise are:

- incompetency issues
- right of access to nursing homes
- deinstitutionalization issues
- fair hearing procedures
- home ownership tax issues.

A legal project addressing these issues has been incorporated in the most recent Ombudsman grant.

PERSONAL LAUNDRY CHARGE DEDUCTION

A substantial number of nursing homes had been deducting a laundry service charge from the personal allowance of nursing home patients. The Ombudsman offered testimony at a Rate Setting Commission urging the elimination of this practice. Upon adoption of this suggestion, the Commission advised the DPW to rescind this practice. The DPW subsequently informed all nursing home administrators of the July 30, 1975 effective date. However, the policy was reversed, effective January 1, 1976. The Department of Elder Affairs recorded opposition to the reversal.

LEGISLATION

The following bills were prepared by the Ombudsman and filed in the Legislature for consideration in the 1975 session:

- H.139 An act to provide for unannounced visits to nursing homes.
- H.141 An act to provide for nursing home patients' Bill of Rights.
- H.3519 An act to provide for a Nursing Home Ombudsman.

In addition, an act was filed by Representative King of Danvers, H.1114, to make discrimination against a publicly assisted nursing home applicant a cause of civil action. This office cooperated with Representative King and supported the act.

IV. LEGISLATIVE RECOMMENDATIONS

The following legislation is recommended:

- A change in the last paragraph of General Laws 111, Section 25B, to add the words "shall be a change in service" after the word "home" in the fifth line.
- The creation of the Office of State Nursing Home Advocate as a fully funded state function. Basically, the office should continue the present activity of the State Nursing Home Ombudsman and be endowed with the necessary authority to discharge its responsibility.
- Adoption of the provisions of H.1114, filed for consideration in the 1975 legislative year.
- The repeal of Paragraph 2 of the General Laws, Chapter 111, Section 71, and the enactment of legislation to require notice to and the written approval of the Department of Public Health before the transfer of a licensed facility. This legislation should also contain a provision requiring the deposit of a reasonable sum in escrow to provide for a refund to the Commonwealth by nursing homes if the final per diem rate approved by the Rate Setting Commission is less than the interim rate.

V. GENERAL RECOMMENDATIONS

MEDICAL DISCRIMINATION

The current practice of discharging private paying patients from nursing homes when their private funds are exhausted should be eliminated. While the patients who move from a private paying status to public assistance should not expect to be maintained in the same private or semi-private room, he/she should not be transferred out of the facility. The facility should be required to provide for the relocation of the patient in the familiar surroundings of the nursing home.

It is also recommended that all persons, regardless of their source of financial support, receive the same quality of care in long term care facilities. Publicly assisted persons should also be admitted to such facilities within the same time frame, from application to placement, as persons able to pay long term care costs with private funds.

Furthermore, a concentrated effort should be made by the Commonwealth to promptly pay all outstanding and future invoices submitted by nursing homes for services rendered to publicly assisted patients. Such action would alleviate the severe burden of limited working capital on nursing homes and consequently increase their willingness to admit more publicly assisted patients.

MEDICAL DIRECTORS

Federal regulations require a Medical Director in skilled nursing facilities. The proper implementation of the powers conferred on the Medical Director can do much to improve the quality of care provided.

Furthermore, the services of the Medical Director in a multilevel facility offering skilled nursing care and intermediate care should be extended to the Level III, intermediate care patients.

TRAINING OF NURSES AIDES

An application should be made to the Department of Health, Education and Welfare for a grant to support additional comprehensive training of nurses aides. If the grant could not be obtained, the Rate Setting Commission allowance should be increased from 50 percent to 100 percent of the cost.

REHABILITATION - PHYSICAL THERAPY

It is recommended that rehabilitation and physical therapy personnel of long term care facilities participate in the Long Term Care Education Center's training program in Region I. The 35 hour course is designed to provide specialized training in the care of chronically ill, geriatric and disabled persons residing in long term care

facilities. In addition to the physical and psychosocial benefits derived by residents from better trained personnel, therapists will gain additional skills to assist them both personally and professionally.

If the nursing home will not assume the \$40. per person training fee, other funding resources should be explored. These may include the incorporation of the training cost by the Rate Setting Commission into the per diem rate, the establishment of a state grant fund to which nursing homes may apply for training cost payments, or the award of a training grant directly to the Long Term Care Education Center.

INVESTIGATIVE/HEARING POLICY

The Board of Registration of Nursing Home Administrators should make it a standard practice and policy to investigate the suitability of its licensee wherever charges involving health care are sustained by the Department of Public Health against a nursing home in which the licensee is the administrator. The same practice and policy should be enforced where a transfer of ownership resulting from health care charges by the Department of Public Health precludes the opportunity on their part to hold a hearing.

TITLE XVIII - XIX PROVIDER CONTRACTS

The provider contracts which are negotiated by the Department of Public Welfare for the health care of medicare/medicaid patients are open ended. They do not require the admission and care of a specific number of patients at each nursing home level. It is recommended that the number of beds which will be available at each level of care be specifically indicated in each provider contract.

